UNITED BASE METALS SDN BHD v. KETUA PENGARAH KUALITI ALAM SEKELILING & ANOR

HIGH COURT MALAYA, SUNGAI PETANI
CHAN JIT LI J
[JUDICIAL REVIEW NO: KB-25-1-08-2021]
25 MAY 2023

Abstract – *The purport and intent of the Environmental Quality Act 1974 ('EQA') and the Solid Waste and Public Cleansing Management Act 2007 ('Act 672') are similar and overlapping. Although the latter is intended to manage solid waste and public cleansing, in the absence of a proper management of these, the environment would ultimately be compromised. Thus, it is only logical that the authorities are permitted to rely on Act 672 in their enforcement of the EQA. As the definition of 'solid waste' in s. 2(a) of Act 672 is wide enough to encompass scrap metals of copper and aluminium, the applicant, in using imported raw materials to carry out recycling and smelting activities of the mentioned scrap metals for the production of ingots at its premises, was indeed carrying out Prescribed Activity No 14(b) on its premises. Further, as the prohibition order issued is clear, unambiguous and unequivocal, consequently there can be no grant of a certiorari to quash it.*

ADMINISTRATIVE LAW: *Judicial review – Certiorari – Application for – Application to quash prohibition order issued pursuant to s. 34AA of Environmental Quality Act 1974 to prohibit company from further conducting prescribed activity at its premises without approval of Department of Environment – Whether prohibition order vague and ambiguous – Whether unlawfully issued – Whether applicant carried out Prescribed Activity No. 14 as specified in First Schedule of the Environmental Quality (Prescribed Activities) (Environmental Impact Assessment) Order 2015 on its premises – Solid Waste and Public Cleansing Management Act 2007, s. 2(a)*

ADMINISTRATIVE LAW: *Exercise of administrative powers – Prohibition order – Company persistently continuing with activities without securing approval of Department of Environment – Whether prohibition order vague and ambiguous – Whether unlawfully issued – Whether applicant carried out Prescribed Activity No. 14 as specified in First Schedule of the Environmental Quality (Prescribed Activities) (Environmental Impact Assessment) Order 2015 on its premises – Solid Waste and Public Cleansing Management Act 2007, s. 2(a)*

The applicant was a company which carried on the business of importing, exporting, manufacturing non-ferrous metals and secondary smelting of aluminium and copper. On 9 February 2021, Jabatan Alam Sekitar Negeri Kedah ('second respondent') inspected the applicant's premises. At the end

of the inspection, the officer issued the applicant a field citation as he found that the applicant was carrying out scrap metals recycling activities at the premises. Another inspection took place on 2 March 2021 and the appellant was again issued with another field citation as the inspecting officer found that the applicant had built a plant to recycle scrap metals at its premises, specifically at a building identified as Block 2C. This activity had been carried out without the prior approval of the Department of Environment ('DOE'). Thereafter, a series of correspondences took place between the applicant and the second respondent but the parties were unable to resolve the matter amicably as the second respondent was of the view that the applicant had failed to comply with its earlier instructions and that there remained a continuous breach of the Environmental Quality Act 1974 ('EQA') by the applicant. Invoking its powers under s. 31(1) (g) of the EQA, the second respondent proceeded to issue the applicant a notice of instruction on 16 March 2021 ('16 March notice'). In this 16 March notice, the second respondent reiterated that it had found that the applicant had constructed a recycling plant to recycle scrap metal without DOE's prior approval and directed the applicant to cease scrap metals recycling activities immediately. Subsequent inspections were carried out and when the second respondent's officers found that the applicant was persistently continuing with its activities without securing DOE's approval, the Ketua Pengarah Kualiti Alam Sekeliling ('first respondent') issued a prohibition order. By way of a judicial review, the applicant sought to declare as unreasonable and unlawful the said prohibition order and sought a writ of *certiorari* to quash it. The issues that arose were (i) whether the prohibition order was unreasonably and fatally vague; and (ii) whether the prohibition order was unlawfully issued by the reason that the applicant did not carry out a Prescribed Activity No. 14 as specified in the First Schedule of the Environmental Quality (Prescribed Activities) (Environmental Impact Assessment) Order 2015 ('Prescribed Activities Order') on its premises.

Held (dismissing application):

(1) The prohibition order had meticulously set out the steps the applicant must undertake before a revocation of the prohibition order would be considered. Any reasonable person on reading the prohibition order would comprehend that: (i) the applicant had been directed to prepare an EIA report which fulfilled the requirements provided in s. 34A(3) of the EQA for DOE's approval; and (ii) pending DOE's approval, the applicant must immediately cease its recycling activities at the premises. There was no vagueness in the prohibition order. The prohibition order was clear, unambiguous and unequivocal in its contents. There was no basis for the prohibition order to be declared unreasonable for reason of vagueness. Consequentially, there could be no grant of a *certiorari* to quash the prohibition order on this ground. (paras 14 & 15)

(2) Prescribed Activity No. 14(b), on which the prohibition stood, makes the provision 'the construction of a plant' (for the respective purposes) and not the disposal of the waste, a prescribed activity. Hence, it was only logical that the quantitative test was conspicuously and intentionally absent in the Prescribed Activity No. 14. Accordingly, there was no duty imposed on the respondents to determine the degree of pollution before issuing the prohibition order. As the quantitative test requirement was non-existent in respect of the Prescribed Activity No. 14, the prohibition order could not be rendered unlawful by the fact that the respondents did not conduct sampling tests before the order was issued. (paras 23 & 24)

(3) The purport and intent of the EQA and the Solid Waste and Public Cleansing Management Act 2007 ('Act 672') were similar and overlapping. Although Act 672 is intended to manage solid waste and public cleansing, the fact of the matter was that in the absence of a proper management of these, the environment would ultimately be compromised. Thus, it was only logical that the respondents were permitted to rely on Act 672 in their enforcement of the EQA. This court was unable to accede to the applicant's submission that adopting the Act 672 definition was only permissible if the Prescribed Activities Order expressly provides for it. If the submission was upheld, there would be utter chaos in the enforcement of the EQA as each set of Regulations would have a different definition for 'solid waste'. (para 32)

(4) The definition of 'solid waste' in para. (a) of s. 2 of Act 672 is wide enough to encompass scrap metals of copper and aluminium. The respondents had shown that the applicant was carrying out the Prescribed Activity No. 14(b) on its premises without an EIA report and approval under s. 34A(3); and hence, the prohibition order was issued. It was not open to the applicant to deny that it had carried out Prescribed Activity No. 14. (paras 34-40)

Legislation referred to:

Environmental Quality (Control of Pollution from Solid Waste Transfer Station and Landfill) Regulations 2009, reg. 2

Environmental Quality (Prescribed Activities) (Environmental Impact Assessment) Order 2015, First Schedule

Environmental Quality Act 1974, ss. 2, 31(1)(g), 34A(2), (3), 34AA(1)(a), 2(c)

Solid Waste and Public Cleansing Management Act 2007, s. 2(a)

For the applicant - Hamdan Hamzah; M/s Hamdan Faida & Assocs
For the respondents - Rahazlan Affandi Abdul Rahim; SFC

Reported by Suhainah Wahiduddin

A

JUDGMENT

Chan Jit Li J:

[1] By way of this judicial review, the applicant seeks to declare as unreasonable and unlawful a prohibition order issued by the first respondent and seeks a writ of *certiorari* to quash the said prohibition order. The prohibition order was issued pursuant to s. 34AA of the Environmental Quality Act 1974 ('EQA') to prohibit the applicant from further conducting a prescribed activity at the applicant's premises without the Department of Environment's prior approval.

C **Background Facts**

[2] The applicant, United Base Metals Sdn Bhd, is a company which carries on the business of importing, exporting, manufacturing non-ferrous metals and secondary smelting of aluminium and copper. This business is carried out on Lots 8068, 8069 and 8071, Jalan Bedong, Kawasan Perindustrian Gurun, Bedong, Kedah.

[3] The first respondent, 'Ketua Pengarah Kualiti Alam Sekeliling', is the Director General of Environment and chief enforcer of the EQA.

[4] The second respondent, 'Jabatan Alam Sekitar Negeri Kedah', is the Kedah Department of Environment at Sungai Petani ('DOE') and the applicant's premises is under its purview.

[5] On 9 February 2021, the second respondent's officer inspected the applicant's premises. At the end of the inspection, the officer issued the applicant a field citation as he found that the applicant was carrying out scrap metals recycling activities at the premises. This field citation required the applicant to carry out the following:

> 13.2.1 Pemohon dikehendaki mengemukakan laporan percontohan cerobong bagi setiap unit cerobong dari setiap 'section' di premis Pemohon;
>
> 13.2.2 Pemohon dikehendaki mendapatkan surat pengesahan berkenaan dengan status EIA untuk proses 'copper rod' dengan JAS Kedah;
>
> 13.2.3 Pemohon dikehendaki mengemukakan surat pengesahan proses 'section' dan status pengoperasian dari setiap 'section' termasuk gambar proses dan jenis material dari setiap 'section'; dan
>
> 13.2.4 Pemohon dikehendaki memberikan maklum balas perkara di atas sebelum 21.02.2021.

[6] Another inspection took place on 2 March 2021. The applicant was again issued with another field citation as the inspecting officer found that the applicant had built a plant to recycle scrap metals at its premises specifically

at a building identified as Block 2C. This activity had been carried out without DOE's prior approval. In this field citation, the applicant was instructed to take the following steps:

1. Seksyen 34AA
Menghentikan aktiviti peleburan copper tanpa kelulusan EIA di Blok 2C dengan serta merta.
2. Menutup laluan keluar di kolam yang terletak di Blok A1 bagi menghalang pelepasan air ke alur air luar dengan serta-merta.
3. Maklumbalas perkara 1 dan 2 ke Jabatan Alam Sekitar Cawangan Sungai Petani sebelum 9.3.2021.
4. Pastikan pematuhan kepada Akta Kualiti Alam Sekeliling 1974 sepanjang masa.

[7] Thereafter, a series of correspondences took place between the applicant and the second respondent but the parties were unable to resolve the matter amicably as the second respondent was of the view that the applicant had failed to comply with its earlier instructions and that there remained a continuous breach of the EQA by the applicant. Invoking its powers under s. 31(1)(g) of the EQA, the second respondent proceeded to issue the applicant a notice of instruction on 16 March 2021. Section 31(1)(g) of the EQA reads as follows:

s. 31 Power to require owner or occupier to install, operate, repair, *etc*

1) Where any environmentally hazardous substances, pollutants or wastes are being or are likely to be emitted, discharged or deposited from any vehicle, ship or premises irrespective of whether the vehicle, ship or premises are prescribed under section 18 or otherwise, or from any aircraft, the Director General may by notice in writing require the owner or occupier of the vehicle, ship or premises, or aircraft, to:

(a) install and operate any control equipment or additional control equipment;

(b) repair, alter or replace any equipment or control equipment;

(c) erect or increase the height of any chimney;

(d) measure, take a sample of, analyse, record and report any environmentally hazardous substances, pollutants, wastes, effluents or emissions containing pollutants;

(e) conduct a study on any environmental risk;

(f) install, maintain and operate monitoring programme at the expense of the owner or occupier; or

(g) adopt any measure to reduce, mitigate, disperse, remove, eliminate, destroy or dispose of pollution,

within such time and in such manner as may be specified in the notice.

A (2) Notwithstanding any other provisions to the contrary, the Director General may by notice direct the owner or occupier of any vehicle, ship, or premises, or aircraft to emit, discharge or deposit environmentally hazardous substances, pollutants or wastes during such periods of day as he may specify and may generally direct the manner in which the owner or occupier shall carry out his trade, industry or process or operate any B equipment, industrial plant or control equipment therein.

…

In this 16 March notice, the second respondent reiterated that it had found that the applicant had constructed a recycling plant to recycle scrap metal C ('loji kitar semula untuk logam terpakai') without DOE's prior approval and directed the applicant to cease scrap metals recycling activities immediately.

[8] Subsequent inspections were carried out and when the second respondent's officers found that the applicant was persistently continuing with its activities without securing DOE's approval, the first respondent on D 5 May 2021 issued a prohibition order. The prohibition order, which is the subject matter of this judicial review, had been issued pursuant to s. 34AA(1)(a) and 2(c) EQA which provides as follows:

34AA Prohibition order for prescribed activities

E (1) The Director General may issue a prohibition order or stop work order to the person carrying out the prescribed activities:

(a) without the approval under subsection 34A(3);

(b) who violates any conditions attached to the approval of the report; or

F (c) which in the opinion of the Director General are being carried out in a manner that is likely to cause environmental damage.

(2) The prohibition order or stop work order may be issued for the purpose of preventing the prescribed activities from continuing:

G (a) either absolutely or conditionally;

(b) for such period as the Director General may determine; or

(c) until requirements to remedy as the Director General may direct have been complied with.

(3) …

H

Issues For Determination

[9] In the written submissions as to why this court should find the prohibition order unlawful and unreasonable and grant the order of *certiorari*, En Hamdan bin Hamzah ('En Hamdan'), learned counsel for the applicant I raised the following issues:

(i) that the applicant had already ceased its recycling and smelting activities;

(ii) that the applicant was prejudiced by the vagueness of the prohibition order as the applicant cannot ascertain what was required of it by the respondents;

(iii) that the applicant did not, as alleged by the respondents carry out prescribed activity 14;

(iv) that the respondents' failure to carry out the mandatory sampling test before issuing the prohibition order was fatal;

(v) that the prohibition order in encompassing Lots 8068 and 8069 had deprived the applicant of its constitutional right to enjoy its lands as Lot 8068 was used as an office and Lot 8069 was a vacant land.

However, at the hearing learned counsel intimated to the court that the applicant was not proceeding with issue (v). In respect of issue (i), the applicant conceded that it was carrying out recycling and smelting activities but maintained that these activities did not offend the EQA.

[10] En Rahazlan Affandi bin Abdul Rahim ('En Rahazlan'), the learned Senior Federal Counsel ('SFC') for both the respondents, submitted that the prohibition order was lawfully issued as the applicant in constructing a plant to carry out its recycling activities of solid waste was guilty of carrying out a prescribed activity, namely, activity 14, as specified in the First Schedule of the Environmental Quality (Prescribed Activities) (Environmental Impact Assessment) Order 2015 (PU(A) 195/2015) ('2015 Prescribed Activities Order'), without the approval of an environmental impact assessment report under sub-s. 34A(3). Further, the learned SFC submitted, the inspections carried out by DOE, Sungai Petani on 17 June, 7 July, 16 July, 8 September and 3 October 2021 revealed that the applicant was still persisting with its copper smelting activities at the same plant in spite of this prohibition order.

[11] After hearing the submissions of both parties, I find that the issues in this judicial review can be framed as follows:

(i) whether or not the prohibition order was unreasonably and fatally vague.

(ii) whether or not the prohibition order was unlawfully issued by the reason that the applicant did not carry out Prescribed Activity No. 14 on its premises.

Whether Or Not The Prohibition Order Was Unreasonably And Fatally Vague

[12] In order to determine this issue, recourse must be made to the contents of the prohibition order. The prohibition order which was personally served on the applicant takes the form of a letter with the additional terms stated in an enclosure identified as 'lampiran 1'. For ease of reference the whole of the document is reproduced below:

A Pengarah Urusan

United Base Metal Sdn. Bhd.
Lot 8068, 8069, 8071
Jalan Bedong
Kawasan Perindustrian Gurun
B 08100 Bedong, Kedah

Tuan

Perintah Larangan Di Bawah Seksyen 34AA
Akta Kualiti Alam Sekeliling (AKAS), 1974 (Pindaan) 2012

C Saya ingin merujuk kepada perkara di atas.

2. Dimaklumkan, merujuk kepada hasil pemeriksaan yang telah dijalankan oleh pegawai-pegawai Jabatan Alam Sekitar Negeri Kedah, Cawangan Sungai Petani terhadap premis tuan pada 9 Februari 2021 mendapati premis tuan telah menjalankan aktiviti kitar semula logam.

D 3. Semakan Jabatan ini mendapati bahawa premis tuan beroperasi tanpa mendapat kelulusan Laporan Penilaian Kesan Kepada Alam Sekeliling (EIA) di bawah Seksyen 34A, Akta Kualiti Alam Sekeliling 1974.

4. Dimaklumkan juga bahawa, aktiviti yang telah dijalankan tersebut merupakan aktiviti yang ditetapkan di bawah Perintah Kualiti Alam Sekeliling (Aktiviti Yang Ditetapkan) (Penilaian Kesan Kepada Alam
E Sekeliling) 2015 seperti berikut:

i) Jadual Pertama, Aktiviti 14, Pengolahan dan Pelupusan Buangan (b) Sisa Pepejal: (ii) Pembinaan loji pulih guna atau loji kitar semula.

5. Sehubungan itu, bagi menjalankan kuasa yang diperuntukkan di bawah
F Seksyen 34AA, Akta Kualiti Alam Sekeliling 1974 (Pindaan) 2012 yang diberikan kepada saya dengan ini mengeluarkan satu Perintah Larangan sepertimana yang diperuntukkan di bawah Seksyen 34AA(1)(a) dan Seksyen 34AA(2)(c) bagi menghalang tuan meneruskan operasi berkuatkuasa serta merta mulai dari tarikh surat ini sehingga kehendak sebagaimana yang diarahkan telah dipatuhi melalui syarat-syarat seperti di
G Lampiran 1.

6. Dengan berkuatkuasanya Perintah Larangan ini, tuan, pekerja atau sesiapa pun tidak dibenarkan untuk menjalankan apa jua pemasangan, pembinaan dan operasi di tapak projek berkenaan bermula dari tarikh Perintah Larangan ini dan sepanjang tempoh Perintah Larangan ini
H berkuatkuasa.

7. Pihak tuan adalah diberi peringatan bahawa kegagalan untuk mematuhi Perintah Larangan ini akan menyebabkan tindakan mahkamah dikenakan kepada pihak tuan tanpa sebarang notis di bawah Seksyen 34AA(3) Akta Kualiti Alam Sekeliling, 1974 (Pindaan) 2012.

I Sekian, terima kasih.

Saya yang menjalankan amanah

(Norlin binti Jaafar)
Ketua Pengarah Kualiti Alam Sekeliling

Ruj. Kami: JAS 100-1/6/1Jilid 5 (36)
Lampiran 1

Syarat-syarat
Perintah Larangan Di Bawah Seksyen 34AA
Akta Kualiti Alam Sekeliling 1974

1. Menghentikan sebarang aktiviti kitar semula logam terpakai (scrap metal recycling) serta merta di premis pulis guna atau kitar semula buangan yang beralamat di Lot 8068, 8069, 8071, Jalan Bedong, Kawasan Perindustrian Gurun, 08100 Bedong, Kedah;

2. Mengemukakan bukti-bukti kukuh menunjukkan pematuhan kepada kehendak oleh Akta Kualiti Sekeliling 1974;

3. Kajian EIA di bawah Seksyen 34A(3) hendaklah dijalankan (*) dan hendaklah mendapat kelulusan Jabatan Alam Sekitar terlebih dahulu sebelum perintah larangan ini ditarik balik.

Nota (*)

Laporan EIA hendaklah mengikut garis panduan sebagaimana yang ditetapkan oleh Ketua Pengarah dan hendaklah mengandungi:

i. Penilaian mengenai kesan yang aktiviti itu akan ada atau mungkin ada ke atas alam sekeliling.

ii. Langkah-langkah kawalan yang dicadangkan hendaklah diambil untuk menghalang, mengurangkan atau mengawal kesan buruk ke atas alam sekeliling; dan

iii. Menggunakan teknologi terkini yang dilengkapi system kawalan pencemaran udara dan pemprosesan yang lebih efektif bagi mengawal pencemaran yang dihasilkan mengikut spesifikasi yang telah ditetapkan dalam Peraturan-Peraturan Kualiti Alam Sekeliling (Udara Bersih) 2014.

4. Menjalankan pemantauan secara harian dan laporan hendaklah dikemukakan pada setiap minggu seperti di LAMPIRAN A kepada Jabatan Alam Sekitar Cawangan Sungai Petani dan Jabatan Alam Sekitar Negeri Kedah.

5. Mengemukakan kerangka bagi mewujudkan tujuh (7) Environmental Mainstreaming Tools (EMT) bagi cadangan projek seperti berikut:

(i) Environmental Policy (EP)

(ii) Environmental Budgeting (EB)

(iii) Environmental Monitoring Committee (EMC)

(iv) Environmental Facility (EF)

A (v) Environmental Competency (EC)

(vi) Environmental Reporting & Communication (ERC)

(vii) Environmental Transparency (ET)

Penerangan lebih lanjut mengenai perkara tersebut di atas adalah seperti
B dijelaskan di dalam Environmental Mainstreaming Directive yang boleh dimuat turun daripada Laman Web Jabatan Alam Sekitar. Bagi tujuan tersebut, pihak tuan dikehendaki untuk melengkapkan dan mengembalikan Laporan Pematuhan EMT seperti di Lampiran B kepada pejabat Jabatan Alam Sekitar Cawangan Sungai Petani. Laporan Pematuhan EMT boleh dimuat turun daripada Laman Web Jabatan Alam
C Sekitar,

(Norlin binti Jaafar)
Ketua Pengarah Kualiti Alam Sekeliling

[13] I note that para. 4 of the covering letter explains to the applicant the
D reason for the prohibition order which is that the applicant was found to have carried out Prescribed Activity 14 of the 2015 Prescribed Activities Order. At para. 3 of the same document, the applicant was duly informed that in failing to obtain a DOE approved environment impact assessment report ('EIA report') before carrying out this activity, the applicant was in breach of s. 34A of the EQA. The applicant was also informed of the consequences
E in the event that it failed to comply with the prohibition order.

[14] I find that the prohibition order had meticulously set out the steps the applicant must undertake before a revocation of the prohibition order will be considered. Any reasonable person on reading the prohibition order will comprehend (i) that the applicant had been directed to prepare an EIA report
F which fulfils the requirements provided in s. 34A(3) of the EQA for DOE's approval and (ii) that pending DOE's approval, the applicant must immediately cease its recycling activities at the premises.

[15] Under the circumstance, I am unable to find any vagueness in the
G prohibition order. As a matter of fact, I find that the prohibition order to be clear, unambiguous and unequivocal in its contents. It is, therefore, my finding that there is no basis for me to declare the prohibition order unreasonable for reason of vagueness. Consequentially, there can be no grant of a *certiorari* to quash the prohibition order on this ground.

H *Whether Or Not The Prohibition Order Was Unlawfully Issued By Reason That The Applicant Did Not Carry Out Prescribed Activity No. 14 On Its Premises*

[16] In order to achieve the intent of the EQA which is to 'prevent, abate, control pollution and enhance the environment', s. 34A empowers the Minister in charge of environment after due consultation with the
I Environmental Quality Council to classify certain activities as 'prescribed activities.' These activities are activities which will adversely impact the

environment significantly and should only commence with the DG's approval. An environment impact assessment report ('EIA report') that complies with s. 34A of the EQA is necessary for consideration of the DG's approval. These can be gleaned from s. 34A of the EQA which reads as follows:

s. 34A Report on impact on environment resulting from prescribed activities

(1) The Minister, after consultation with the Council, may by order prescribe any activity which may have significant environmental impact as prescribed activity.

(2) Any person intending to carry out any prescribed activity shall appoint a qualified person to conduct an environmental impact assessment and to submit a report thereof to the Director General in the manner as the Director General may prescribe.

(2A) The Director General shall maintain a list of qualified persons who may carry out an environmental impact assessment and submit a report thereof.

(2B) The qualified person who submits the report shall:

(a) be responsible for the environmental impact assessment and the recommendations of the environmental impact assessment;

(b) ensure that the report and the recommendation do not contain any false or misleading information;

(c) take a professional indemnity insurance for any liability arising from the environmental impact assessment and the recommendations of the environmental impact assessment.

(2C) The report shall be in accordance with the guidelines as the Director General may prescribe and shall contain:

(a) an assessment of the impact such activity will have or is likely to have on the environment; and

(b) the proposed measures that shall be undertaken to prevent, reduce or control the adverse impact on the environment.

(3) If the Director General on examining the report and after making such inquiries as he considers necessary, is of the opinion that the report satisfies the requirements of subsection (2C) and that the measures to be undertaken to prevent, reduce or control the adverse impact on the environment are adequate, he shall approve the report, with or without conditions attached thereto, and shall inform the person intending to carry out the prescribed activity and the relevant approving authorities accordingly.

(4) If the Director General, on examining the report and after making such inquiries as he considers necessary, is of the opinion that:

A (a) the report is not in accordance with the development plan or physical plan approved by the relevant approving authority; or

(b) the report does not satisfy the requirements under subsection (2C),

he shall not approve the report, giving reasons for not approving, and shall inform the person and the relevant approving authority accordingly.

B (5) The Director General may require the person to submit any other report to him, in addition to the report required to be submitted under subsection 34A(2), relating to the environmental impact for his approval.

(6) Any person intending to carry out a prescribed activity shall not carry out such activity until the report required under this section to be C submitted to the Director General has been submitted and approved.

(7) If the Director General approves the report, the person carrying out the prescribed activity, in the course of carrying out such activity, shall provide sufficient proof that the conditions attached to the report (if any) are being complied with and that the proposed measures to be taken to D prevent, reduce or control the adverse impact on the environment are being incorporated into the design, construction and operation of the prescribed activity.

(8) …

E **[17]** In the matter before me, it is the respondents' case that the applicant had constructed a plant to recycle solid waste and that construction of the plant is Prescribed Activity 14(b) under the 2015 Prescribed Activities Order. This being the case, and if read with s. 34A(2) of the EQA, it was incumbent on the applicant to prepare the EIA report and secure DOE's approval before commencing with the construction. The applicant had failed F to comply with both the EIA report and approval requirements and, therefore, the prohibition order was warranted.

[18] En Hamdan's reply submission on the issue of prescribed activity is two-pronged. I shall term his first argument as 'the quantitative test requirement'. His other argument relates to the definition of 'solid waste'. In G view of En Hamdan's submissions, I find it necessary to consider two subsidiary issues before I can ascertain whether or not the applicant did carry out Prescribed Activity 14. The subsidiary issues are as follows:

(i) whether or not the quantitative test is a mandatory requirement under H Prescribed Activity 14.

(ii) whether or not the applicant's activities involve the recycling of solid waste?

Whether Or Not The Quantitative Test Is A Mandatory Requirement Under Prescribed Activity 14

I **[19]** Prescribed Activity 14 under the 2015 Prescribed Activities Order reads as follows:

14. Waste Treatment And Disposal:

(a) Scheduled waste:

(i) Construction of recovery plant (off-site).

(ii) Construction of wastewater treatment plant (off-site).

(iii) Construction of storage facility (off-site).

(b) Solid waste:

(i) Construction of composting plant.

(ii) Construction of recovery plant or recycling plant.

(c) Sewage:

(i) Construction of sewage treatment plant with 20,000 population equivalent or more.

(ii) Sludge treatment facilities.

(emphasis added)

[20] It is En Hamdan's submission that not every 'waste' is actionable. He submits that the respondents can only act against the applicant only if the respondents can show that the waste from the applicant's activities has reached a certain threshold or quantity. This requirement, he submits, is implicit in the environmental provisions and clearly reflected in the definition of 'waste' in the EIA which reads:

2 Interpretation

In this Act, unless the context otherwise requires-

…

"waste" includes any matter prescribed to be scheduled waste, or any matter whether in a solid, semi-solid or liquid form, or in the form of gas or vapour which is discharged, emitted, or deposited in the environment in **such volume, composition or manner as to cause pollution.** ...

(emphasis added)

[21] This quantitative test requirement is also found in the description of prescribed activities in the 2015 Prescribed Activities Order; examples of which can be seen in Prescribed Activity 1, 2 and 3 which provides as follows:

1. Agriculture:

(a) Land development schemes covering an area of **20 hectares or more but less than 500 hectares** to bring forest into agricultural production.

(b) Development of agricultural estates covering an area of **500 hectares or more** involving changes in types of agricultural use.

A 2. Aerodrome:

Expansion of an aerodrome involving a runway of **1,000 metres or longer.**

3. Drainage And Irrigation:

B (a) Construction of man-made lakes and enlargement of artificial lakes with surface areas of **100 hectares or more.**

(b) Irrigation schemes covering an area of **500 hectares or more.** …
(emphasis added)

C It is also his submission that it matters not that Prescribed Activity No. 14 is silent on this quantitative test requirement as the requirement must be read into it for the provision to be consonant with the general tenor and spirit of the environmental law.

[22] En Hamdan further submits that, in the instant case, this quantitative test requires a waste sampling test to be carried out so to determine either D the volume, composition or other unit of measurement of the waste discharged by the applicant is sufficient to render the waste actionable waste. And, as the respondents had admitted that no sampling test was carried out before the prohibition order was issued, the order cannot be allowed to stand as there was no way the respondents could have concluded the extent of the E pollution.

[23] I find this argument to be without merit. Firstly, it is a basic rule of interpretation that the court cannot read into a statute further words when the provisions are clear and unequivocal. In considering the 2015 Prescribed Activities Order, I find that indeed this quantitative test is applied to almost F all of the prescribed activities. However, Activity 14(b), on which the prohibition order stands, is an exception. This provision makes 'the construction of a plant' (for the respective purposes), and not the disposal of the waste, a prescribed activity. Hence, it is only logical that the quantitative test was conspicuously and intentionally absent in Prescribed Activity 14.

G **[24]** Accordingly, I find that there is no duty imposed on the respondents to determine the degree of pollution before issuing the prohibition order. As the quantitative test requirement is non-existent in respect of Prescribed Activity 14, the prohibition order cannot be rendered unlawful by the fact that the respondents did not conduct sampling tests before the order was H issued.

Whether Or Not The Applicant's Activities Involves The Recycling Of Solid Waste

[25] I am unable to ascertain what is En Hamdan's stand in relation to the applicant's activities due to the changing submissions and qualified I concessions. Be that as it may, I proceeded to make a finding of the nature of the applicant's activities by considering the documentary evidence before me. The detailed description of its activities can be found in the applicant's affidavit in reply (encl. 17).

[26] I find that in encl. 17, the applicant admits that it recycles non-ferrous scraps involving copper and aluminium metals. The imported raw materials were processed at the premises including the smelting of scrap metals of copper and aluminium. Smelting is a process involving the extraction of metal from its ore by a process of heating and melting. After the metal is extracted from its ore, the scrap metals will be converted into ingots to be sold. The applicant's customers are other industries which use the applicant's ingots to manufacture other goods.

[27] Apart from the applicant's affidavit in reply, one Tan Pei Su, who was the applicant's general affair manager had given a statement to the following effect:

Penyataan Semasa Siasatan

Nama: Tan Pei Su

Nama Saya Tan Pei Su. Saya Juga dikenali sebagai Jessie.

Saya bertugas sebagai General Affair Manager di United Base Metals Sdn. Bhd. Yang beralamat Lot 8067, 8068, Kawasan Perindustrian Gurun, 08100 Bedong Kedah. Tugas saya lebih kepada umum contohnya purchasing atau pentadbiran (admin).

Pada 17 Jun 2021, pegawai dari JAS Cawangan Sungai Petani hadir ke premis United base Metals Sdn. Bhd. lebih kurang jam 12.44 pm untuk menjalankan pemeriksaan. Pegawai-pegawai yang hadir adalah Encik Ya Mohammad Nazir Syah bin Ismail dan Puan Azliyatun Saadiah binti Ibrahim.

Kilang memproses scrap metal yang diimport dari luar negara dan memprosesnya sehingga menjadi produk. Produk yang dihasilkan adalah copper flake dari proses di 1A, 2A dan 2F. Produk 2G hanyalah setelah manual segregation. Tiada further process selepas itu di dalam kawasan kilang. Produk setelah 2C adalah copper ingot. Kawasan 2F juga menghasilkan resin plastik.

Semasa pemeriksaan furnace di 2C beroperasi. Proses manual segregation di 2G juga sedang berlaku. Mesin memproses resin di 2F beroperasi pada hari tersebut. Mesin tersebut memproses kitar semula insulator kabel menjadi resin. Resin tersebut adalah produk.

Mesin segregation di 2A juga beroperasi pada masa tersebut. Fungsi mesin tersebut adalah untuk asingkan copper dengan pvc daripada kabel wayar terpakai. Proses dan operasi di 1A juga sama seperti 2A. Insulator daripada proses ini buat masa ini masih distorkan di kilang. Cuma pada masa dahulu, pernah dibuang di tapak pelupusan sampah dan juga dijual kepada pihak ketiga.

Pada 7 Julai 2021, pegawai dari JAS Cawangan Sungai Petani hadir ke premis United Base Metal Sdn. Bhd. lebih kurang jam 11.19 pagi untuk menjalankan pemeriksaan. Pegawai yang hadir adalah Puan Azliyatun Saadiah binti Ibrahim dan juga Encik Md. Sayudi bin Saini.

Pada waktu tersebut, furnace di 2C tidak beroperasi dan juga proses di 2F. Proses yang beroperasi semasa pemeriksaan tersebut adalah di 1A.

Saya maklum berkenaan Perintah Larangan yang telah dikeluarkan oleh Ketua Pengarah nombor rujukan JAS 100-2/6/1 Jld. 5 (36) bertarikh 5 Mei 2021. Walau bagaimanapun, saya hanya menjalankan tugas mengikut arahan. Arahan datang daripada Tan Boon Hai yang dikenali sebagai Mr. Eric.

Sehingga hari ini, syarikat tidak menghantar pelaporan harian sepertimana yang dikehendaki dalam syarat Perintah Larangan tersebut. Ini adalah kerana saya tak pasti cara pelaporan tersebut.

[28] From the above, I am satisfied that the applicant had used imported raw materials to carry out recycling and smelting activities of scrap metals of copper and aluminium for the production of ingots at its premises. This brings me to the next question: does scrap metals of copper and aluminium constitute solid wastes?

[29] There is no definition of the term 'solid waste' in the EIA or in the 2015 Prescribed Activities Order. It is, therefore, En Hamdan's submission that in view of this 'lacuna' the applicant cannot be said to have recycled solid wastes as there is nothing to say that scrap metals of copper and aluminium are solid wastes.

[30] En Rahazlan submits that the respondents are relying on the definition of 'solid waste' as defined in the Solid Waste and Public Cleansing Management Act 2007 ('Act 672'). This reliance was objected to by En Hamdan on the grounds that the respondents cannot be permitted to rely on Act 672 as (i) it is an unrelated Act and (ii) the said Act is within the jurisdiction of another Minister and Director General namely the Minister and DG charged with the responsibility for solid waste and public cleansing management. He further submits that if at all it was the intention of the Legislature for the 2015 Prescribed Activities Order to rely on the definition of solid waste in Act 672, the 2015 Prescribed Activities Order must expressly provide so; as can be found in the Environmental Quality (Control of Pollution From Solid Waste Transfer Station and Landfill) Regulations 2009 (PU(A) 433/2009) ('2009 Regulations').

[31] I agree with the learned SFC that reliance can be placed on the definition of 'solid waste' as found in Act 672. That is a trite principle of Legislative interpretation. My reasons are as follows.

[32] The purport and intent of the EQA and Act 672 are similar and overlap. Although Act 672 is intended to manage solid waste and public cleansing, the fact of the matter is that in the absence of a proper management of these the environment will ultimately be compromised. Thus, it is only logical that the respondents are permitted to rely on Act 672 in their enforcement of the EQA. This deduction of mine is buttressed by the fact that

the 2009 Regulations specifically imports the meaning of 'solid waste' under Act 672 for its (2009 Regulations) enforcement. Regulation 2 provides as follows:

> **Interpretation**
>
> In these Regulations:
>
> …
>
> **"solid waste"** has the same meaning assigned to it in the Solid Waste and Public Cleansing Management Act **[Act 672]** … (emphasis added)

I am also unable to accede to the applicant's submission that adopting the Act 672 definition is only permissible if the 2015 Prescribed Activities Order expressly provides for it. This is because if the submission is upheld, there will be utter chaos in the enforcement of the EQA as each set of Regulations will have a different definition for 'solid waste.'

[33] In the final analysis, it is my finding that the respondents can rely on the definition of 'solid waste' under Act 672 and that definition provides as follows:

> **Interpretation**
>
> s. 2 In this Act, unless the context otherwise requires: …
>
> **"solid waste"** includes:
>
> (a) any scrap material or other unwanted surplus substance or rejected products arising from the application of any process;
>
> (b) any substance required to be disposed of as being broken, worn out, contaminated or otherwise spoiled; or
>
> (c) any other material that according to this Act or any other written law is required by the authority to be disposed of, but does not include scheduled wastes as prescribed under the Environmental Quality Act 1974 [Act 127], sewage as defined in the Water Services Industry Act 2006 [Act 655] or radioactive waste as defined in the Atomic Energy Licensing Act 1984 [Act 304]; (emphasis added)

[34] It is also my finding that the definition of 'solid waste' in para. (a) of s. 2 of Act 672 is wide enough to encompass scrap metals of copper and aluminium.

[35] In view of these findings, I am satisfied that the respondents have shown that the applicant was carrying out Prescribed Activity No. 14(b) on its premises without an EIA report and approval under s. 34A(3); and, hence, the prohibition order was issued.

[36] I would also like to add that the applicant's agent had made an admission that it was carrying out the said activity. The firm of Messrs Thohaa Enviro Consultancy had been appointed by the applicant as its qualified person to prepare the EIA report. The letter of appointment appears as follows:

Letterhead United Base Metals Sdn. Bhd.

17th November 2020

Director
Thohaa Enviro Consultancy
No. 88, 1st Floor, Jalan Serdang 1
Pusat Perniagaan Serdang
Kepala Batas
Pulau Pinang

Dear Mr. Mohd. Nasir bin Abdul Rahman

Appointment Letter Of (EIA) Environmental Impact Assessment Consultancy For United Base Metals Sdn. Bhd.

Referring to the abovementioned.

We are writing to confirm your engagement as a consultant for United Base Metals Sdn. Bhd., United Copper Industry Sdn. Bhd., United Aluminium Sdn. Bhd. (EIA for materials preparation to manufacturer of Aluminium Ingot – (UAI) and Copper Ingot, copper rod, plate etc. (UCI)

We have already discussed the duties you will be required to undertake and the type of service we need.

2. Your place of work shall be Lot 8068, 8069, 8071, Jalan Bedong, Kawasan Perindustrial Gurun, 08100 Bedong, Kedah Darul Aman.

3. We shall require regular progress reports on projects in which you are involved.

4. The manner in which are performed will be entirely for you to decide but you must comply with all reasonable requests from the board of the company. You must ensure that your services are carried out in such manner that the company is in no way prejudiced.

Thank you.

Your sincerely

Tan Boon Hai
Chief Executive Officer

[37] Messrs Thohaa Enviro Consultancy did not deny the existence of the activity at the applicant's premises. Instead it conceded the transgressions as shown in its letter to DOE Sg Petani:

Letterhead Thohaa Enviro Consultancy

Your Ref : AS(B)K(SP)38/119/100/153

Our Ref : TEC/SU/UBMSB/TL21-2

Date: 17 March 2021

Ketua Cawangan
Jabatan Alam Sekitar Cawangan Sungai Petani
Tingkat 1, No. 7 & 8
Jalan Bank
08000 Sungai Petani
Kedah

Tuan/Puan

Per: Maklumbalas Notis Arahan Di Bawah Seksyen 31(1), Akta Kualiti Alam Sekeliling 1974

Kami adalah dengan segala hormatnya merujuk kepada perkara di atas adalah berkaitan.

2. Terlebih dahulu pihak kami ingin memohon maaf di atas kesalahan-kesalahan yang pihak pemaju kami telah lakukan. Pihak pemaju telah melantik pihak kami untuk menyediakan Laporan Penilaian Kesan Kepada Alam Sekeliling (EIA). Bersama-sama dengan ini pihak kami lampirkan bersama surat lantikan daripada pihak pemaju kepada pihak kami dan jadual progress yang pihak kami cadangkan untuk melengkapkan laporan tersebut untuk rujukan pihak Jabatan.

3. Pihak kami juga ingin memohon maaf atas kelewatan dalam menyediakan laporan EIA tersebut disebabkan ingin mendapat kepastian daripada bahagian EIA, JAS Alor Setar. Setelah membuat perbincangan dengan pegawai JAS Alor Setar iaitu Encik Humaidi pada 4hb Mac 2021 dan mendapat keputusan untuk jalankan kajian tesebut dan proses yang dijalankan oleh pihak pemaju adalah tertakluk di bawah peraturan. Pada masa yang sama pihak kami juga mengeluarkan satu (1) Notis Pemberhentian Kerja kepada pihak pemaju. Di sini kami lampirkan bersama juga surat notis tersebut.

4. Sehubungan dengan itu, semoga pihak Jabatan berpuas hati dengan usaha dan langkah-langkah yang telah diambil oleh pihak pemaju dan pihak kami akan cuba untuk melengkapkan laporan tersebut mengikut masa yang ditetapkan.

Sekian, terima kasih.

Mohd. Nasir bin Abdul Rahman
Pengarah

[38] At the same time, the firm advised the applicant to comply with the prohibition order:

Letterhead Thohaa Enviro Consultancy

Ruj Kami : Thohaa/EIA/UNITEDBASEMETAL/170321

Tarikh : 17 MARCH 2021

Director
United Base Metal Sdn. Bhd.
Lot 8071 Jalan Bedong
Kawasan Perindustrian Gurun
08100 Gurun
Kedah Darul Aman

Sir/Madam

Advice On Stop Work Order For SW110 & SW422 – Offsite Recovery Plant On Lot 8071 Jalan Bedong, Kawasan Perindustrian Gurun, Kedah Darul Aman For United Base Metal Sdn. Bhd.

Thohaa Enviro Consultancy is a EIA environmental consultant appointed for the project mentioned as above.

Base on letter from Department of Environment Kedah (Ref.Num:AS(B)KSP38/119/100/153 Jilid 4(6)), dated 16th March 2021, an order to stop any recycle process and to reduce the pollution immediately starting from 16th March 2021 have been given to United Base Metal Sdn. Bhd.

Therefore, as environmental consultant, our advice for United Base Metal Sdn. Bhd. to stop all recycle process immediately to avoid being compound by Department of Environmental Kedah as stated in letter (Ref.Num:AS(B)KSP38/119/100/153 Jilid 4(6)).

Thank you for your cooperation.

Mohd. Nasir bin Abdul Rahman
Pengarah

[39] In the circumstances, it is not open to the applicant to deny that it had carried out the Prescribed Activity 14(b).

[40] In view of my findings on both the issues, the application for the judicial review is dismissed with costs.